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VIA: FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

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JUL 28 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: Docket No. 92-266; Reply Comments of the Small Cable Business Association to the Fifth Notice of Proposed Rulemaking

Dear Mr. Caton:

Enclosed for filing are the original and 14 copies of the above-captioned document. We have also enclosed a copy with a pre-addressed Federal Express envelope and request that a file-stamped copy be returned to us.

The prompt dissemination of this information to the Commissioners and appropriate staff members is greatly appreciated.

If you have any questions or comments, please call us.

Very truly yours,

HOWARD & HOWARD

Eric E. Breisach

Enclosures
cc: Mr. David D. Kinley
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of	)	MM Docket No. 92-266
The Cable Television Consumer	)	
Protection and Competition Act	)	
of 1992	)	
	)	
Rate Regulation	)	

REPLY COMMENTS TO THE FIFTH NOTICE OF PROPOSED RULEMAKING

Prepared by:

SMALL CABLE BUSINESS ASSOCIATION

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Dated: July 27, 1994

TABLE OF CONTENTS

SUMMARY

For the first time in the history of cable television regulation, the Commission recognized that small cable operators are distinguishable for regulatory purposes from larger operators. While the Small Cable Business Association ("SCBA") applauds the establishment of a company size standard, it maintains that the standard is insufficiently inclusive and the manner in which it was established violated the Small Business Act.

The Commission established a number of "transitional treatments" in an unsuccessful attempt to temporarily shelter certain systems and operators from the rate rollbacks that were beyond their abilities to absorb. Two of these "transitional" classifications are driven in whole or in part by company size, with relief being accorded only to smaller entities. The other "transitional" classification, "low-cost systems," is typically unavailable to smaller cable operators. The inadequacies in the "transitional" relief structure have been reviewed with Commission and Cable Bureau personnel and will be the subject of an SCBA filing in the near future.

The two "transitional" classifications involving company size are: (1) small operator, including only companies with 15,000 or fewer subscribers (approximately $4 million in gross annual revenue); and (2) small multiple system operators, including only companies with 250,000 or fewer subscribers, an average system size of less than 1,000 and no system larger than 10,000 subscribers. Of the 106 companies with more than 15,000 but 250,000 or fewer subscribers, only 16 companies meet this definition.

A prerequisite to the establishment of any small business definition by an administrative agency is full compliance with the 1992 amendments to the Small Business

Act. These amendments require that an administrative agency: (1) use notice and comment rulemaking; and (2) either adopt the Small Business Administration's size standard or adopt another standard but only after receiving the approval of the Administrator of the Small Business Administration ("SBA").

The Commission violated all of these requirements. While its August 10, 1993 *Further Notice Of Proposed Rulemaking* gave notice of the intent to establish an "MSO subscriber cap," it did not give any indication that the definition of a "small operator" would be adopted. Furthermore, the current SBA small business definition for cable television operators is $11 million in gross annual receipts. The Commission chose not to adopt this standard, but one that was significantly lower (approximately $4 million), without so much as consulting the SBA, let alone seeking their approval.

This flagrant violation of federal law, coupled with the harsh consequences on many smaller operators and operators of smaller systems, remains unremedied. To add insult to injury, the Commission has begun voluntarily complying with the 1992 amendments to the Small Business Act in subsequent rulemakings, with significant benefits accorded small business. For example, in the Broadband Personal Communications Services docket, the SBA developed, and the FCC adopted, a small business definition of $40 million -- ten times the size of the Commission's definition for small cable operators. Furthermore, companies with fewer than $75 million and $125 million in gross annual receipts received significant benefits.

SCBA has repeatedly requested that the Commission undertake a comprehensive cost study of the small operators and operators of small systems. The Commission has adopted

this concept and is about to begin the third phase of rate regulation -- finalizing the rate structure based on the cost studies. The initial jubilation over this chance to get a "fair shake" was rapidly replaced with dejection as small operators realized that the Commission tied its own hands through inept wording in the *Fifth Notice Of Proposed Rulemaking* ("*Fifth Notice*").

SCBA cannot know the motivations or intentions of the Commission. While SCBA representatives have been assured that the purpose of the cost studies is to review all small business issues, including redefinition of what constitutes a small cable operator, the plain words the Commission chose in the *Fifth Notice* neither support those assertions nor, more importantly, do they permit the Commission to carry them out.

The Commission has limited application of the cost study results to those systems that currently qualify for transitional relief. There are many smaller operators and operators of smaller systems that do not qualify and will not be protected from regulatory burdens they simply cannot afford -- even if the cost studies validate their need for protection!

Even if the Commission were to step outside the plain language of the *Fifth Notice* and attempt to redefine a small business, it would again run afoul of the Small Business Act requirements, as the FCC must first provide public notice of that action, and then seek the input and approval of the SBA Administrator.

The Commission should renotice the cost studies and declare that rate relief will be accorded to all classes of cable operators to the extent justified by the results of the cost studies. Inherent in this process is construction of a factual record upon which a small business definition could be developed with the approval of SBA (assuming a size standard

other than $11 million is chosen). The Commission should allow itself the flexibility to tailor rate regulation as warranted by the cost studies.

The importance of accurately requesting, receiving and analyzing cost study data is vital to achieving an equitable rate regulatory scheme for small cable operators. It is essential that the Commission properly execute the cost studies to ensure the collection of meaningful results. SCBA suggests that rather than attempt to accelerate the cost studies at the risk of destroying their reliability, the Commission adopt specific alternate interim measures for a wide variety of small operators and operators of small systems. SCBA will be making additional specific alternative proposals in the near future.

I. INTRODUCTION

The Small Cable Business Association ("SCBA") is a self-help group formed by small cable operators faced with an unprecedented labyrinth of overwhelming regulations. SCBA's primary purpose is to help small operators learn, understand and implement the new requirements.

SCBA is barely one year old. Several small operators decided to meet in Kansas City on Saturday May 15, 1993. Word of the meeting spread and one hundred operators attended. The Small Cable Business Association was formed by the end of the day.

From these simple beginnings, SCBA has rapidly grown to over 325 members. More than half of them have fewer than 1,000 subscribers in total. SCBA continues its mission to educate and assist small operators using unpaid, volunteer leadership. SCBA has also been very active in the rulemaking process in this Docket.

II. THE SMALL BUSINESS DEFINITIONS ARE AN ESSENTIAL ELEMENT IN THE COMMISSION'S RATE REGULATIONS BUT WERE PROMULGATED BY THE COMMISSION IN VIOLATION OF THE SMALL BUSINESS ACT.

In its continuing effort to implement rate regulation mandated by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), the Commission issued its *Second Report and Order on Reconsideration*, MM Docket No. 92-266, FCC No. 94-38, Released March 30, 1994 ("*Second Reconsideration Order*"). In this *Order*, the Commission established different rate standards and procedural options for two different classes of small cable operators. The first is for companies with fewer than 15,000 total

subscribers.[1] The second is for systems with 1,000 or fewer subscribers that are owned by multiple system operators ("MSO") with 250,000 or fewer total subscribers.[2]

A. The Commission Established Small Business Definitions In Violation Of Federal Law.

The establishment of company size standards in the manner that the Commission used in this proceeding is violative of federal law. Congress created specific procedural requirements that must be followed whenever an administrative agency establishes a definition of small businesses.

1. Small Business Definition

As the Commission is aware, Congress has generally defined a small business as one which is: (1) independently owned and operated; and (2) not dominant in its field of operation.[3]

2. The Small Business Act Provisions Apply Because Most Cable Operators Do Not Have National Dominance.

The Commission has generally determined that both cable television operators as well as telephone companies were not subject to the provisions of the Small Business Act since they were in many cases the exclusive provider of services and, if not exclusive, at least dominant.[4] The Commission has previously used a local measure to determine dominance.

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[1]47 C.F.R. Section 76.922(b)(4).

[2]47 C.F.R. Section 76.922(b)(5).

[3]15 U.S.C. §632(a).

[4]*See*, e.g., *Report and Order*, in the Matter of Regulation of Small Telephone Companies, CC Docket No. 86-467 (Released June 29, 1987) 2 FCC Rcd. Vol. 13 3811 at 3815.

In the recently promulgated regulations, however, the Commission applied a national test (i.e., aggregate subscribership) in determining dominance to establish the regulatory burden to be placed on cable operators. Since the cable industry on a national level is dominated by a few large MSOs,[5] the cable operators impacted by the size definitions are simply not dominant when viewed on a national basis. Therefore, the provisions of the Small Business Act apply to the instant rulemaking.

3. The Commission Has Not Complied With The Procedural Requirements Of The Small Business Act.

Prior to the enactment of the Small Business Credit Enhancement Act in 1992, §3(a) of the Small Business Act defined a small business as one that was independently owned and operated and not dominant in its field. The Act also authorized the Administrator of the SBA to promulgate size standards for various classes of businesses in order to carry out the purposes of the Small Business Act.[6] Under the Act and these size standards, federal agencies were at liberty to craft their own size standards for compliance with the Regulatory

[5]The largest 25 MSOs currently service approximately 80 percent of homes receiving cable. According to *Cable Television Developments*, published by the National Cable Television Association (April 1994) at p. 14-A, the largest 25 MSOs provide service to 44 million homes, at p. 13-A, representing approximately 80 percent of the homes with basic cable service. This percentage is consistent with the Commission's own fact finding in 1990 that the largest 25 MSOs had a total industry share of 79.58 percent. *Report*, In the Matter of Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, MM Docket No. 89-600 (Released July 31, 1990)("Cable Competition Report"). Even within this group, the 5 largest MSOs currently serve approximately 27 million subscribers, or 49 percent (including the pending acquisitions of Times Mirror by Cox Cable and Maclean Hunter by Comcast). Operators smaller than the ten largest MSOs serve less than one or two percent of the national market individually.

[6]Those size standards can be found at 13 C.F.R. §121.601.

Flexibility Act,[7] or for any other specific regulatory purposes. Thus, under previous versions of the Small Business Act, the FCC could have defined a small cable operator for purposes of regulatory relief without regard to the SBA's size standards prior to September 4, 1992.

The President signed the Small Business Opportunity and Credit Enhancement Act[8] into law on September 4, 1992. This law amended §3(a) of the Small Business Act and mandated that the SBA's size standards were to apply to fulfill the purposes of any other statute in addition to the Small Business Act. The amendments provided two exceptions: (1) if the other statute provides a different small business definition, such as the Family and Medical Leave Act of 1993 (small business with fewer than 50 full-time employees); or (2) the head of the agency determines that the size standards promulgated by the SBA are inappropriate for a particular regulatory program and follows the procedures set forth in the Small Business Act for crafting a different definition of small business.

In the instant case, the 1992 Cable Act did not contain a small business definition. In fact, the only size definition it contained was to define a small system as one with 1,000 or fewer subscribers.[9] Since system size is a local measure and bears no necessary relationship to company size,[10] the quantification of a system size standard does not establish a small business definition in the 1992 Cable Act.

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[7]5 U.S.C. §§601-12.

[8]Pub. L. No. 92-366.

[9]47 U.S.C. §543(i).

[10]A cable operator might own a single system with 1,000 or fewer subscribers, or a large multiple system operator with 5 million total subscribers might own a system with 1,000 or fewer subscribers.

The Commission also failed to adopt the SBA's size definition for cable operators. Use of a subscriber number is inappropriate because the amendments to the Small Business Act require adoption of a gross revenue size standard for non-manufacturing businesses.[11] The lack of a definition established by Congress in the 1992 Cable Act, coupled with the departure of the Commission from the established SBA standard, requires the Commission to follow the clear and simple procedures mandated in the Small Business Act. The Commission simply ignored these procedures with respect to the regulation of cable television, although it has curiously begun compliance with the procedures in subsequent non-cable television rulemakings.[12]

The Commission did not issue appropriate notice and comment rulemaking for the establishment of small business definitions. The Commission's *Memorandum Opinion And Order And Further Notice of Proposed Rulemaking*, released August 10, 1993, merely stated that it was considering establishing a limitation on the relief accorded systems with 1,000 or fewer subscribers based on the size of the company that owned the system. It never gave notice of the Commission's intent to establish a separate set of rules for small businesses. Even if the Commission argues that it gave notice and an opportunity to comment, officials at the United States Small Business Administration have confirmed that the Commission

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[11]The SBA currently defines a small cable operator as one with annual gross revenues below $11 million. The *Second Reconsideration Order* implicitly acknowledges the Commission's failure to utilize this definition by noting that systems with 15,000 subscribers earn approximately $3.6 million to $4.5 million from regulated cable service. *Second Reconsideration Order* at ¶ 120.

[12]*See*, e.g., In The Matter of, Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, GN Docket No. 94-33, Released May 4, 1994.

has never sought the approval of the Administrator of that agency for any of the small business definitions adopted by the Commission.

4. The Commission Has Begun Complying With the Small Business Act In Subsequent Rulemakings With Dramatic Results.

In its Broadband Personal Communication Services ("PCS") *Fifth Report and Order*, the Commission, upon the advice of the Small Business Administration, developed a small business definition of $40 million[13] in gross annual receipts -- ten times the equivalent standard given to cable television. Furthermore, significant incentives were given to companies with less than $75 million[14] and $125 million.[15]

The small business definitions adopted for regulatory purposes for both cable television and PCS are based on capital attraction standards.[16] There simply is no justification for a ten-fold difference.

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[13]In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Fifth Report And Order*, Released July 15, 1994, at ¶175.

[14]These companies may be eligible to pay their license fees in installments.

[15]These companies have a special block of licenses reserved for them called "entrepreneurs' blocks."

[16]The Commission states in Paragraph 120 of the *Second Order On Reconsideration* that "We believe that operators who exceed this revenue level are sufficiently large that they will likely be able to apply for bank loans, credit lines or other sources of financing in their communities should application of the full 17 percent competitive differential pose financial difficulties for them." The converse of this statement is that operators with 15,000 or fewer subscribers are not able to attract capital (debt or equity).

B. The Small Business Definitions Were Created To Provide Essential Protection From Rate Rollbacks.

Rate regulation is comprised of two components: (1) initial rate rollbacks to eliminate "monopolistic profits;" and (2) limitations on future rate increases (price caps). The Commission has reached the conclusion that smaller cable operators should be shielded initially from any of the additional rate rollbacks for two reasons.[17] First, the evidence on the record indicates that smaller operators may have lower-than-average margins, suggesting that they earned a lower level of (or no) monopoly profits. Second, the Commission was "concerned that some small operators may not have the financial wherewithal to withstand the impact of a significant reduction."[18]

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[17]The Commission stated in the *Second Reconsideration Order* at ¶118 (emphasis added):

> First, evidence submitted by petitions in this proceeding suggests that smaller systems may face higher than average costs [citations, including to SCBA comments are omitted]. This evidence is insufficient to allow us to conclude that all small systems face systematically higher costs due to the absence of industry-wide cost data. The information in the record, nonetheless, raises a legitimate question as to whether some systems (and operators) with a limited subscriber base do in fact have unusually high costs (and thus lower-than-average margins). In addition, we are concerned that some small operators may not have the financial wherewithal to withstand the impact of a significant rate reduction. We therefore believe that it is appropriate to study the costs of small operators, and compare those costs with the prices they charge for regulated services and equipment, before requiring them to reduce their rates to the full reduction levels.

[18]*Second Reconsideration Order* at ¶118.

1. Qualification As A Small Business Was Designed To Provide Interim Transitional Relief.

The regulations promulgated by the Commission in the *Second Reconsideration Order* required most operators to roll rates back to full reduction levels (i.e., 17 percent below the rates charged on September 30, 1992). This amended a maximum 10 percent reduction from the September 30, 1992 rates as part of the Commission's *Report and Order* released May 3, 1993. Three classes of systems were identified for "transition" treatment in the *Second Reconsideration Order*, meaning that the full reduction need not be taken immediately, pending the completion of an industry cost study.[19]

The transition relief classifications are for "low cost systems," those whose benchmarks are above full reduction rates;[20] "small operators," those systems owned by companies having fewer than 15,000 total subscribers;[21] and "small systems" owned by small multiple system operators.[22] Although small systems and operators are not precluded from seeking "low cost system" treatment for a particular system, only the latter two methodologies are crafted specifically for smaller systems and operators. Each methodology is described below.

a. Low Cost Transition Relief

If an operator's benchmark rate, as derived by the Commission's formula, is above the full reduction rate, the operator need only reduce its current rate to the benchmark

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[19]*See*, e.g., *Second Reconsideration Order* generally at ¶¶117 - 131.

[20]47 C.F.R. §76.922(b)(4)(B).

[21]47 C.F.R. §76.922(b)(4)(A).

[22]47 C.F.R. §76.922(b)(5).

level, deferring the remainder of the reduction until completion of the cost study. This methodology seldom provides protection for smaller systems and operators because the design of the benchmark system results in lower rates for smaller systems and operators than for larger ones. In addition, a number of factors which significantly increase the amount of the benchmark rate are typically not found in smaller systems and operators.[23]

(1) Small Operator Transition

The Commission defined small operators as those with 15,000 or fewer subscribers.[24] The Commission established this definition with no support[25] for its rationale for selecting the 15,000 subscriber number.[26] These small operators are entitled to avoid any addition rollbacks from their March 31, 1994 rates.[27]

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[23]For example, independently owned systems have much lower rates than MSO owned systems, smaller operators typically operate in more rural areas with lower median household income amounts, smaller operators have fewer systems, and smaller systems and operators frequently did not charge separately for remote controls or tier changes (assuming an operator had more than just a basic tier), all of which reduce the amount of the benchmark rate.

[24]47 C.F.R. §76.922(b)(A).

[25]The Commission merely relies on its "beliefs" without citing any factual basis on the record to support the "beliefs." *See, Second Reconsideration Order* at ¶120.

[26]*Second Reconsideration Order* at ¶120.

[27]This does not allow operators to avoid the rate regulations promulgated and complied with by the operator prior to the *Second Reconsideration Order* which could result in a rollback of at least 7 percent (i.e., a 10 percent rollback less a 3 percent inflation adjustment).

(2) Small System Transition

Congress mandated that the Commission reduce the administrative burdens on small cable systems.[28] The Commission also determined that such systems should not be required to roll rates back by the full reduction rate at the current time.[29] To qualify, according to the Commission, however, the system must be owned by an MSO that has an average system size of 1,000 subscribers or less and has no single system with more than 10,000 subscribers. SCBA has determined that for operators with more than 15,000 subscribers (who qualify for small operator transition treatment), only 16 of 106 possible MSOs meet the strict qualifiers imposed by the Commission.[30] Therefore, even though the Commission established a class entitled to relief, it defined the group so narrowly as to exclude 85 percent of such MSOs.[31]

2. Qualification As A Small Business Will Continue To Be Important In the Commission's Final Rules.

The *Fifth Notice* states that the Commission is preparing to undertake a cost study

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[28]47 U.S.C. §543(i).

[29]*Second Reconsideration Order* at ¶209. The full reduction rate is 17 percent less an inflation adjustment of 3 percent (a net of 14 percent). Qualified small systems need only reduce rates from current levels. Full reduction rates often require the loss of rate increases implemented in the normal course of business during the period October 1, 1992 through April 5, 1993 (the beginning of the rate freeze). Therefore, full reduction rates frequently require more than a 14 percent net rollback.

[30]SCBA has gathered this information from a review of the Nielsen database of cable operators and systems.

[31]It is important to note that Congress' statutorily-imposed mandate to provide relief to small systems demonstrated no intent to qualify relief given to a small system based on ownership of the system. Therefore, there is no legal basis whatever in the Cable Act for the Commission's limitation based on system ownership.

in which it will determine the appropriate level of initial rate reductions, if any, which must be undertaken by small systems and operators.[32] The Commission plainly stated that future relief from the full reduction rates will be limited to the groups of systems and operators that currently qualify for transition relief:

> As discussed above, we have determined that systems owned by small operators and systems with low prices will not have to apply the full 17 percent competitive differential pending our analysis of the relationship between costs and prices for those systems. We are initiating these cost studies in our *Cost Proceeding*. Accordingly, **we are here providing notice that we will establish further requirements concerning permitted rates for systems currently eligible for transition treatment**. As stated, depending on the results of our cost studies, these further provisions could require such systems to terminate transition relief and establish full reduction rates.

Fifth Notice at ¶ 254 (emphasis added).

Although Commission personnel have stated during meetings with SCBA representatives that they intend to reevaluate the treatment of all systems and revisit the company size standard in conjunction with the cost study, this is simply not an option under the plain words of the *Fifth Notice*. Not only does the *Fifth Notice* severely limit the group of operators who will benefit from the cost studies, it clearly states the only purpose of the cost studies is to determine whether to "require such systems to terminate transition relief and establish full reduction rates,"[33] not expand any substantive rate relief to other operators.

The Commission could remedy this situation by simply renoticing the rulemaking, thereby giving itself the flexibility to revisit the company size issue and take whatever action

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[32]*Fifth Notice Of Proposed Rulemaking*, MM Docket No. 92-266 at ¶254.

[33]*Id.*

is warranted by the outcome of the cost study, so long as the provisions of the Small Business Act are followed in the process. If the Commission attempts to change the size standard without renoticing the proceeding, it will violate not only the provisions of the Administrative Procedures Act, but also the Small Business Act.

III. ACCURATE PREPARATION, EXECUTION AND ANALYSIS OF THE COST STUDIES IS ESSENTIAL TO PROVIDE FAIR AND MEANINGFUL RELIEF TO SMALL CABLE OPERATORS.

A. The Commission Must Decide The Emphasis Of The Cost Study

The Commission must make the fundamental decision whether to base the cost studies on determination of total cost or net margins, the latter of which would involve a revenue analysis as well. This conceptual decision must be made before requesting information from operators.

B. The Cost Surveys Must Be Carefully Designed

SCBA has attempted to gather information regarding various financial attributes of small operators in the past. The seemingly straightforward process becomes very complex when dealing with smaller companies that do not necessarily possess a high degree of sophistication in their financial accounting systems. The result is often either an incomplete or an incorrect response to questions.

The Commission must exercise extreme care to ensure that the cost surveys are constructed in a format which will be understood by someone not possessing an advanced degree in either economics or finance. It must also avoid requesting data which is not normally maintained by cable operators. SCBA offers any assistance it can provide to the

Commission in the design of the surveys.

C. The Cost Surveys Data Must Be Carefully Analyzed

Equally as important to accurate information gathering is the proper analysis of the data. This component places even greater emphasis on the importance of the information gathering process. A prerequisite to proper analysis is identifying and capturing all relevant data.

One of the Commission's greatest challenges will be to categorize operators for different regulatory treatment. SCBA has raised objections in the past that variables significantly affecting capital and operating costs per subscriber were ignored (e.g., density of homes passed) or not properly captured in the Commission's prior data gathering. It is essential that the Commission carefully craft properly inclusive categories in which operators may fall. Once again, SCBA offers any assistance it can provide to facilitate proper identification of such classes.

IV. THE COMMISSION MUST RETAIN A SMALL BUSINESS DEFINITION AS PART OF ITS FINAL RULES.

The Commission determined in its *Second Reconsideration Order* that certain operators were simply not large enough to attract the necessary capital to absorb the full impact of rate regulation.[34] The Commission was absolutely correct. The cost studies will demonstrate this characteristic, but likely for a much wider group of operators.

The Commission established a small business definition stating "Our concern with small operators is aimed at those companies that do not have access to the financial

[34]*Second Reconsideration Order* at ¶120.

resources or other purchasing discounts of larger companies."[35] These same conditions exist regardless of whether the Commission is crafting interim "transition" rules or its permanent rules. It would be arbitrary and capricious for the Commission to ignore the small operator and small system concerns in the final rulemaking. No matter what the Commission might argue to try to avoid the requirements of the Small Business Act in this matter, by its own words, it has defined a small business. Even though the Commission termed them "small operators", this is a distinction without a difference and the Commission cannot attempt to retract special treatment for such companies.

[35]*Second Reconsideration Orde*r at footnote 157.

V. CONCLUSION

The Commission has realized that regulating large and small companies alike places burdens on smaller companies that threaten their continued existence. It merely went about defining a small business incorrectly. At the conclusion of the third phase of rate regulation (the cost studies) the Commission has the ability to stop perpetuating its noncompliance with the Small Business Act by redefining a small business and following the provisions of the Small Business Act. It simply needs to renotice the instant rulemaking and acknowledging that the final company size standard should be based on the record of the proceeding to be developed by the cost studies.

Respectfully submitted,

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